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Date: 3.2.18

In re: Operation Candy Crush

SUMMARY OF INVESTIGATION

I met with Sheriff Fitzhugh on March 2nd, 2018 and requested an administrative review on Operation Candy Crush. My request was granted, and I have found the following.

It appears the investigation into the sale of CBD products were initiated by N.D. 1 on February 3, 2017. A 20 gram package of "Chill gummies / SOUR FACES" was purchased for \$24.13 at on February 3, 2017 after N.D. 1 viewed a Facebook advertisement. (Ex.1-B). The Tennessee Bureau of Investigation Crime Laboratory received this package on February 8, 2017. The "Official Forensic Chemistry Report" issued on May 12, 2017 listed a "Red gummy candy" contained both Cannabidiol (Schedule VI) and 5-Fluoro ADB. (Ex. 1-C).

In addition, the lab wrote "5-Fluoro ADB is a methylindazolecarboxamidobutanoate compound and is defined as an illegal substance pursuant to Tennessee Code Annotated §39-17-438(a)(1)(S)." (Ex. 1-C). It is important to separate the two substances. The later of the two being a synthetic compound explicitly illegal in Tennessee (Tenn. Code Ann. §39-17-438(a)(1)(S)) and Federal Law (Ex. 29-F and 30-L).

N.D. 1, along with two other Narcotics Detectives, met with an Assistant District

Attorney (A.D.A.) after the lab report was received. The purpose of this meeting was to seek

prosecutorial direction on the case. One concern was the lab report stated CBD was a Schedule

Six, but it could not be found in the Tennessee Code Annotated. I was informed one or more



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telephone calls were made between an A.D.A. and Tennessee Bureau of Investigation (T.B.I.) employee(s) discussing the results of the report. (Ex. V-1).

Information was conveyed to N.D. 1 that 5-Fluoro ADB was a synthetic and specifically listed in the lab result because it had been linked to two deaths. Detectives were assured CBD was an illegal Schedule Six product and that it needed to be prosecuted. (Ex. V-1). While attending this meeting, N.D. 4 inquired about the fact that CBD products were being sold on Amazon. He stated an A.D.A. advised we were not going after Amazon. (Ex. V-4 and V-7). In addition, detectives were directed to buy similar products at various Tobacco Shops and Vape Stores (Ex. V-1 and V-4).

On September 6, 2017, N.D. 4 sent a news article text message to an A.D.A. titled "DA warns of crackdown on marijuana-related products." (Ex. 29-A and 29-B). The article appears to have been published by The Daily Herald on April 11, 2017 and starts off by stating "District Attorney Brent Cooper gave buyers and sellers of a marijuana compound 30 days notice Tuesday to stop transactions involving the drug or face prosecution." (Ex. 29-C). N.D. 4 stated he had sent this article to offer the alternative of providing the stores notice. (Ex. V-4).

It appears in an effort to express the illegality of CBD, N.D. 1 received an email on January 4, 2018 titled "CBD memorandum." I obtained the attached document with a heading titled "MEMORANDUM OF LAW REGARDING THE SALE OF SUBSTANCES CONTAINING CANNABIDIOL IN TENNESSEE." (Ex. 27-B and 28-E). N.D. 1 received a message from an A.D.A. on January 4, 2018 asking "Did that email clear things up?" In which he responded "Yeah it did... thanks." (Ex. 25-A). This message is consistent with the email.

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On January 5, 2018, N.D.1 was sent an invitation to attend a meeting at the Tennessee Bureau of Investigation Headquarters in Nashville, Tennessee. (Ex. 25-A). On January 8, 2018 he received notification the meeting had been moved to "Thursday" being January 11, 2018. This meeting was attended by multiple T.B.I. employees, two A.D.A.s, and N.D.1. (Ex. V-1).

It appears N.D. 1's concerns grew more after attending a meeting at the T.B.I. headquarters. The meeting's purpose was for T.B.I. to clarify whether CBD was illegal or not. N.D. 1 stated the conversation consisted of what he described as "lawyer talk" that was very unclear to him. A T.B.I. employee expressed it was a scheduled substance, but he couldn't elaborate in this case whether it was illegal or not. The same employee advised he could not test for the percentage of THC. T.B.I. was very clear they did not have the equipment. (Ex. V-1).

N.D. 1 stated his takeaway from the meeting was that T.B.I. couldn't test the percentage of THC and the chemist couldn't determine whether or not it was legal or illegal in the case. Towards the close of the meeting, N.D. 1 spoke up to a T.B.I. attorney and asked if this stuff legal or illegal. According to N.D. 1, the response included I am going to give you the most lawyer answer you are going to hear and its case specific. An A.D.A. allegedly turned and stated to N.D.1 that this stuff is illegal and we are going forward with this. N.D. 1 stated he felt shut down by the A.D.A. (Ex. V-1). N.D. 1's recollection of the meeting with T.B.I. appears consistent with T.B.I.'s press release. (Ex. 29-D).

N.D. 1 mentioned to his supervision on multiple occasions his concerns in the prosecutorial direction of CBD cases. It appears the District Attorney's Office wanted the case to go before the October 2017 Grand Jury. Then it was decided it would be presented to the



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December 2017 Grand Jury. N.D. 1 slow walked the CBD case from going to Grand Jury in the later part of 2017 because he wanted more assurance the products were illegal. Because of his delay, the District Attorney's Office went up three tiers of supervision to speed up the investigation. (Ex. V-1 and Ex. 015).

A couple of meetings transpired within weeks leading to the Grand Jury indictments. It appears multiple narcotics detectives met with Major Bill Sharp during one of these meetings. They expressed multiple concerns and shared different resolutions to pursue the CBD case. Some of those options consisted of sending letters to the businesses informing them they may have tainted products and/or serving search warrants on the stores to further test the products without any arrests. Most detectives agreed that padlocking businesses was extreme. (Ex. 014). It appears, based on his detectives concerns, Major Sharp leaned towards postponing any advancement of the case. (Ex. 015).

I was informed, unsatisfied with Major Sharp's decision, the District Attorney's Office reached out to the highest level of command at the Sheriff's Office. Two members from the District Attorney's Office met with the Sheriff and two Chiefs. The Sheriff would not override the Major's decision, but instead allowed for the District Attorney's Office to set up another meeting with Major Sharp and multiple narcotics detectives. On February 2, 2018, Major Sharp, N.D. 5, and other narcotics detectives arrived at the District Attorney's Office. I was informed this was a contentious meeting where detectives again expressed various concerns. However, information portraying the illegality of the substance was again conveyed to the narcotics

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detectives. (Ex. V1, Ex. V-2, Ex. 014, and Ex. V-5). Operation Candy Crush was executed on February 12, 2018.

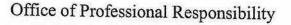
FINDINGS

N.D. 1 and other Sheriff's Office employees appeared to have concerns over the legality of CBD from the very beginning of the investigation. Concerns consisted of whether the product was legal or not, the store owners' lack of knowledge should it be illegal, and the opioid problem. (Ex. 015). My review reveals the arrest and padlocking were the most problematic areas of agreement between the Sheriff's Office and District Attorney's Office. On January 30, 2018, N.D. 1 was given notification to "Seize funds in cash register and all cbd related items. Also each store gets a asp lock on front and back doors." (Ex. 25-A).

Sheriff's Office Narcotics Detectives are not familiarized with "padlocking -- e.g. Petition for Abatement of Nuisance." After speaking to several detectives with years of experience, it is not a customary practice by the Sheriff's Office. This is a statutory remedy in which neither Sheriff, nor deputies have special standing to petition. The jurisdiction to abate is conferred by statute and states "The jurisdiction is hereby conferred upon the chancery, circuit, and criminal courts and any court designated as an environmental court pursuant to Chapter 426 of the Public Acts of 1991, Chapter 212 of the Public Acts of 1993 or Chapter 667 of the Public Acts of 2002 to abate the public nuisances defined in § 29-3-101, upon petition in the name of the state, upon relation of the attorney general and reporter, or any district attorney general, or any city or county attorney, or without the concurrence of any such officers, upon the relation of ten (10) or

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more citizens and freeholders of the county wherein such nuisances may exist, in the manner herein provided." (Tenn. Code Ann. §29-3-102).

A Petition for Abatement of Nuisance in this case was filed by the "STATE OF TENNESSEE, ex rel" and signed by the District Attorney General and two Assistance District Attorney Generals. (Ex. 30-I). The Petition was accompanied by two other documents. One was an "Affidavit In Support of Petition for Abatement of Nuisance and Order to Search Premises" This document is signed by law enforcement affirming their factual findings as a result of their investigation. (Ex. 30-J). Another accompanying document was the "Temporary Injunction and Order to Padlock Premises" which was signed by two Assistant District Attorneys and a Judge. This document contains language "It is therefore ORDERED, ADJUDGED, and DECREED that Detective...., or any other peace officer in this county, shall CLOSE and PADLOCK the business know as:....." (Ex. 30-K).

Reviewing an example of a sealed indictment, language appeared at the top stating "Capias / Bench Warrant - Grand Jury Sealed Indictment." Additional language stated "To Any Lawful Officer of Said County: You are commanded to take the body of _______ if to be found in your County, and keep him/her safely, so that you have him/her before Judge of Rutherford County Circuit Court for the County of Rutherford, at the Rutherford County Judicial Building in the town of Murfreesboro, instanter, and then there to answer to the charge(s) of:"

It appears although the Sheriff's Office assisted with arranging the press conference, the decision came from the District Attorney's Office (Ex. 25-A and Ex. 015). On February 5, 2017, an A.D.A. notified N.D. 1 "RCSO, MPD, SPD, & TBI all confirmed for press conference. Only



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waiting on confirmation from LPD, but shouldn't be a problem." (Ex. 25-A). Within seven minutes, N.D. 1 received notification "LPD confirmed." (Ex. 25-A). For whatever reason, the Tennessee Bureau of Investigation did not attend. Communication regarding any public press conference should not be channeled to a case agent detective.

Law enforcement officers have a somewhat special relationship with the District Attorney's Office. Deputies assigned to the Criminal Investigation Division, including the narcotics division, must seek prosecutorial direction and advice throughout the meticulous cases they encounter. After reviewing this case in its entirety, I don't feel any additional Standard Operating Procedures would have changed the circumstances. A Standard Operating Procedure provides only administrative guidance and can't override the voluminous duties imposed on the Sheriff's Office by the Tennessee Constitution, Tennessee Code Annotated, and case law.

I have completed the investigation and find there are no policy violations committed by the Narcotics Division in re: Operation Candy Crush. However, I recommend consultation with the County Attorney in any future case where law enforcement is directed to perform actions inconsistent with their individual discretion or in which they have persistent concerns such as presented in Operation Candy Crush.

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CASE FILES

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03	Interview Notes - N.D. 1	3
04	Rights Statement for Subject Employee - N.D. 2	1
05	Interview Notes - N.D. 2	1
06	Rights Statement for Subject Employee - N.D. 3	1
07	Interview Notes - N.D. 3	1
08	Rights Statement for Subject Employee - N.D. 4	1
09	Interview Notes - N.D. 4	1
010	Interview Notes -	1
011	Rights Statement for Subject Employee - N.D. 5	1
012	Interview Notes - N.D. 5	2
013	Rights Statement for Subject Employee - N.D. 6	1
014	Interview Notes - N.D. 6	2
015	Typed Statement - Major Bill Sharp	3
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3-A	Picture of	1
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4-H	RCSO Evidence and Property Room Receipt #	1
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Receipt

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Related S.O.P.

AT 101	~ 1
No. 101	Code of Conduct
1 1 1 1 1 1 1	1 .116 15 - 4 11 1

No. 102 Standard Operating Procedures

No. 103 Obedience to Orders

No. 104 Standards of Conduct

No. 600 Office of Professional Responsibility

No. 601 Citizen Complaints

1. 1- V 1590 4/9/18

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